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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,517	08/17/2000	Mitsuru Tanabe	KOIK-Q9495	8570

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
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EXAMINER
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BAYAT, BRADLEY B

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/622,517	<b>Applicant(s)</b> TANABE ET AL.	
	<b>Examiner</b> Bradley B. Bayat	<b>Art Unit</b> 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-8, 10-13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8, 10-13, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of: ~
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Status of Claims*

This communication is in response to applicant's amendment filed on May 17, 2005 wherein claims 2, 3, 10 13, and 15 were amended. Thus, claim 2-8, 10-13, 15 and 16 remain pending.

### *Response to Arguments*

Applicant's arguments filed on 17 May 2005 have been fully considered but they are not persuasive. Applicant's arguments are addressed as follows:

#### **Rejection under 35 U.S.C. §101**

In response to examiner's rejection under 35 U.S.C. §101, the applicant argues two main points. Applicant relies on In re Alappat arguing that the rejected claims "are statutory under 35 U.S.C. 101 absent a showing that the claimed process does not have a practical application in the technological art (applicant's response p.7). Furthermore, applicant quotes portions of the MPEP indicating that the rejection is in "in violation<sup>1</sup> of the guidelines of MPEP §2106." Id. at 7-8. The examiner respectfully disagrees.

Although the claimed process must have a practical application to be statutory under 35 U.S.C. §101, such practicality is evidenced upon a showing that the claimed process produces a useful, concrete and tangible result. See State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1373, 47 U.S.P.Q.2d 1601 (Fed. Cir.1998). In Alappat, the court "held

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<sup>1</sup> These Examination Guidelines for Computer-Related Inventions ("Guidelines") are to assist Office personnel in the examination of applications drawn to computer-related inventions. "These Guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law. These Guidelines have been designed to assist Office personnel in analyzing claimed subject matter for compliance with substantive law. Rejections will be based upon the substantive law and it is these rejections which are appealable. Consequently, any failure by Office personnel to follow the Guidelines is neither appealable nor petitionable. MPEP §2106.

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that more than an abstract idea was claimed because the claimed invention as a whole was directed toward forming a specific machine that produced the useful, concrete, and tangible result of a smooth waveform display.” 33 F.3d 1544, 31 U.S.P.Q.2d 1557 (Fed. Cir. 1994).

As pointed out in the previous rejection, the examiner has applied a two-prong test. The examiner rejected the claims as directed to non-statutory subject matter because there is no recitation indicating “the use of a computer method/system” and the mere implication of employing processing in the preamble or method steps, does not confer statutory subject matter (rejection pp.2-3, dated 12/17/04). Furthermore, the examiner stated that unless there is a positive recitation of the steps so as to breathe life and meaning in the claim as a whole, mere implication of performing processing steps does not confer statutory subject matter. *Id.* at 3. Claim language that simply specifies an intended use or field of use for the invention generally will not limit the scope of a claim, particularly when only presented in the claim preamble. See *Walter*, 618 F.2d at 769, 205 USPQ at 409.

The method steps employed in claim 2 are condensed as follows to *expressly* illustrate the examiner’s rejection: i) storing information in a database; ii) acquiring the information from the database; iii) deciding whether or not an action should occur based on information comparison; iv) conditionally (“whether copying of the content is allowed or not”) taking action depending on (iii). Thus, the conditional step as recited either takes action and allows copying or not.

The subject matter of a properly construed claim is defined by the terms that limit its scope. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does

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not limit the scope of a claim or claim limitation. MPEP §2106. Accordingly, claim 2 fails to do just that as presented above.

Furthermore, by merely using terms such as “database” or “copying” or “duplicating” in the method steps of a claim do not render a claim statutory and invention in the technological arts. A “database” is defined as “loosely, an aggregation of data; a file consisting of a number of records (or tables), each of which is constructed of fields (columns) of a particular type, together with a collection of operations that facilitate searching, sorting, recombination, and similar activities.”<sup>2</sup>

Therefore, there is always some form of physical transformation within a computer because a computer acts on signals and transforms them during its operation and changes the state of its components during the execution of a process. Even though such a physical transformation occurs within a computer, such activity is not determinative of whether the process is statutory because such transformation alone does not distinguish a statutory computer process from a nonstatutory computer process. What is determinative is not how the computer performs the process, but what the computer does to achieve a practical application. See *Arrhythmia*, 958 F.2d at 1057, 22 USPQ2d at 1036.

**Rejection under 35 U.S.C. §112**

Applicant’s amendment of claim 15 overcomes the rejection pertaining to that claim and it is accordingly withdrawn. However, the rejection of claim 16 under Section 112 is maintained. Specifically, claim 16 recites an “information processing method according to claim 3, further comprising...” Independent claim 3, however, is directed to a “program storage

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<sup>2</sup> Microsoft Press Computer Dictionary, Second Edition, p. 105, 1994.

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medium.” Claim 16 is therefore rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention by failing to further limit the scope of claim 3.

**Rejection under 35 U.S.C. §102**

Applicant argues that “[n]owhere does Sugiyama disclose or suggest recording a previous duplication start time and comparing the time to a predetermined period for prohibiting duplication (applicant’s response p. 11).”

On the contrary, Sugiyama discloses a comprehensive and dynamic time accumulating, generating, outputting, measuring means based on predetermined variables to facilitate authentication for accomplishing various tasks, including, unauthorized copying of information (column 2, lines 57-column 3, line 25). Sugiyama discloses that “time data tx is stored into the specific computer 26 and storage medium where the information is to be retained, during or after the making of the information by the computer 26. Thus, mutual authentication between the two is effected so as to determine a computer that is authorized to access the information storage medium” (column 22, lines 43-62).” As a consequence, when the information storage medium is attempted for unauthorized copying or utilization of the information, an error detection is made by comparison of the time data. Thus, effectively prevents unauthorized utilization of the target information. On the other hand, upon an authorization decision based on the time data, access and copying of the information is allowed. Id.

In fact, Sugiyama discloses that one of the aspects and benefits of the invention is to prevent abuse and unauthorized use of information based on various authentication parameters, especially, using time value and measurements in a dynamic fashion (column 20, lines 1-48;

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column 23, lines 20-43). Such principles can certainly be applied to prevent mass copying of information data based on predetermined time values, based on Sugiyama's unique time generation, accumulation, measurement, authentication and ultimate application (see Sugiyama's illustrations of embodiments 1-3).

Applicant further argues that Sugiyama "only allows the installation of software in the case where encrypted parameters match" and does not disclose or suggest comparing a previous time to pre-established interval for determining whether content can be reproduced (response p. 11). Sugiyama discloses, "The unique time generating device of the present invention may be incorporated in software installed in the computer used or stored in an IC (Integrated Circuit) chip provided in the computer. Specifically, the unique time generating device in the form of an IC chip may be run by a CPU coupled with a memory (column 10, lines 22-42)." Furthermore, Sugiyama discloses:

FIG. 17 shows a similar case where the transaction-requesting party sends a second request for transactions (information) to the transaction-serving party at a given point after execution of the initial transaction as described above in relation to (A) of FIG. 17. Namely, in this case, mutual authentication between the requesting and serving parties is conducted on the basis of time data txE and txF stored in the requesting and serving parties, respectively, at the last transaction. At the current transaction as well, time data txG and txH are generated in the requesting and serving parties, respectively, on the basis of a unique time measurement (based on time G or H) indicated by the transaction-requesting party's or transaction-serving party's unique time generating device. Each of the thus-generated time data is sent to the other party's computer as additional data to be added to the previously generated time data, so that a combination of the time data txE and txG is formed and stored in the requesting party's computer and a combination of the time data txF and txH is formed and stored in the transaction-serving party's computer. Namely, for each of these successively executed transactions, the other party to the transactions can be identified with increased accuracy by accumulatively storing and updating/generating the time data. Further, in these successively executed transactions, new time data may be updated/generated at the requesting and serving parties by selecting or extracting time data generated at the individual transactions (e.g., by combining the time data of every odd-numbered transaction or convoluting the time data of every fifth transaction). Further, when the mutual authentication such as shown in FIG. 15 is to be done in the above-described embodiment, the software at the requesting and serving parties may be set in such a manner that they are allowed to proceed to communication for desired substantive transactions only after all the time data are exchanged there between and the password (time data txB) transmitted from the transaction-requesting party and password (time data txA) transmitted from the transaction-serving party coincide with each other. More specifically, desired communication-based substantive transactions may be initiated, only after each of the parties stores a sum of different value data (txB+txA) received from the other party, then transmits definite value data at subsequent transactions and then determines that a sum of the transmitted values coincide with the sum stored in the memory (column 17, lines 39-column 18, line 16).

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Moreover, in response to applicant's argument that the prior art does not disclose a processing feature that prevents mass duplication of already duplicated content, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

**Rejection under 35 U.S.C. §103**

Applicant argues that the examiner's rejection relates to printed matter as a material and is therefore does not have anything to do with the configuration of an electronic system (response p.12).

The rejection does not assert that the reference made would work with any type of data. The rejection follows the *Graham v. Deere* inquiries by determining the scope and content of the prior art, determining the differences between the prior art and the claims at issue and resolving this difference in light of the level of ordinary skill in the art. While the particular data claimed (ISRC identifiers) is not identical to that in the reference, it would have been recognized by those of ordinary skill in the art that any difference does not create a functional distinction between the claimed method and the teachings of the main reference.

In other words, those of ordinary skill in the art would have recognized, in light of the applied prior art, that the claimed data used does not alter how the claimed steps are performed.



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As a result, since the steps of the claimed method and those of the prior art are effectively the same, there is no patentable distinction.

Therefore, since the particular data as recited has been determined to be nonfunctional descriptive material, it does not need to be taught by the prior art. Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

**THEREFORE, THE REJECTION IS MAINTAINED AND THIS ACTION MADE FINAL.**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-8, 10-13, 15 and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. Mere recitation in the

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preamble (i.e., intended or field of use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. In addition, for a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, applicant's recited claims fail to indicate the use of a computer processing system/method wherein the positive recitation in the claims as a whole breathe life and meaning to achieve the stated claimed invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 16, the claim refers to a "method according to claim 3," however, independent claim 3 refers to a computer storage medium; thus claim 16 failing to further limit the scope of claim 3.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 2-8, 10-13, 15 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Sugiyama, U.S. Patent 5,933,625.**

As per the following claims, Sugiyama discloses:

Claims 2, 3 (Currently Amended): An information processing method/computer-readable program comprising: a storage step for storing information for discriminating contents duplicated in the past and temporal data as to a previous start time of duplication of said contents is-tile past into a database; an acquisition step for acquiring the information for discriminating content to be duplicated; a decision step for deciding whether or not copying of the contents discriminated by the discriminating information is allowed in accordance with a comparison between the temporal data stored in the database and current time; and a duplication step for duplicating the contents in accordance with said decision whether copying of the content is allowed or not, wherein the duplication of the content is prohibited when an interval of time between the current time and the previous start time of duplication of said content specified by the temporal data stored in the database is less than predetermined amount of time (column 19, line 26-column 23, line 17 and associated figures).

Claim 4 (Currently Amended): The information processing method according to claim 2 wherein said contents is reproduced from an information storage medium (figures 18-21 and associated text.

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Claim 5 (Currently Amended): The information processing method according to claim 4 wherein said information recording medium is a compact disc (column 19, lines 42-45).

Claim 10 (Currently Amended): The information processing method according to claim 2, further comprising: a step of checking data in said database; said checking step detecting possible modification using a hash function (column 16, lines 24-57).

Claim 11 (Currently Amended): The information processing method according to claim 2 wherein said predetermined amount of time is a fixed value (column figures 18, 19 and associated text).

Claim 12 (Previously Presented): The information processing method according to claim 2 wherein duplication of the content is allowed when said discrimination information and temporal data of the content to be duplicated is not stored in the database (columns 20-21).

Claim 15 (New): The information processing method according to claim 1, further comprising: updating the previous start time of duplication in the database to the present time when the duplication of content is permitted (column 10, line 43-column 11, line 64).

Claim 16 (New): The information processing method according to claim 3, further comprising: updating the previous start time of duplication in the database to the present time when the duplication of content is permitted (figure 17 and associated text).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugiyama.

As per claims 6-8, Sugiyama discloses a method of acquiring, storing and duplicating content based on specified and predetermined criteria, i.e., time. Sugiyama does not expressly disclose the use of specific discriminating criteria such as the ISRC unique identifiers or table of contents of artistic works encoded into media in order to carry out the specified step or function.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The step or functions of the claimed invention will be performed regardless of the type of data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to utilize encoded content identifying a work or the specific parts of a work for which such tag are specifically provided for (i.e., ISRC unique identifiers, TOC), because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

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As per claim 13, Sugiyama discloses a method of acquiring, storing and duplicating content based on specified and predetermined criteria, i.e., time. Sugiyama does not expressly disclose the use of a watermarking technique to encrypt data. However, applicant's utilization of a well-known encryption mechanism to embed data in the recording medium does not render the claim otherwise patentable.

The examiner has not edited the amendments to the claims in the above-recited rejection, since they merely "address cosmetic matters of form" and do not alter the scope of the rejection previously issued (response p. 7).

*Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.*

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- US Patent 6,034,832 to Ichimura et al.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley B. Bayat whose telephone number is 571-272-6704. The examiner can normally be reached on Tuesday - Friday 8 a.m.-6:30 p.m. and by email: bradley.bayat@uspto.gov. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Or faxed to:

**(571) 273-8300** - Official communications; including After Final responses.

**(571) 273-6704** - Informal/Draft communications to the examiner.

bbb

*Alma Loui*  
PRIMARY EXAMINER